



March 25, 2005

ENGROSSED SENATE BILL No. 513

DIGEST OF SB 513 (Updated March 24, 2005 10:31 am - DI 87)

Citations Affected: IC 8-23; noncode.

Synopsis: INDOT construction contracts. Requires the department of transportation (INDOT) to adopt rules to establish a formal procedure for highway improvement projects involving the relocation of utility facilities. Requires the rules to provide for an exchange of information among INDOT, utilities, and highway construction contractors. Allows a civil action to be brought against INDOT, utilities, or construction contractors for costs resulting from a willful violation of the rules. Allows INDOT to acquire real property for the placement or relocation of a utility facility within the right-of-way of the state highway system. After June 30, 2005, prohibits INDOT from including in a construction contract or any related documents a provision prohibiting or restricting the receipt by a contractor of reasonable compensation or reasonable expenses directly related to unforeseen conditions during a construction contract as a result of: (1) conflicts with utility facilities; or (2) delays due to utility facility relocations. Requires INDOT to revise its standard construction specifications, drawings, and other documents to eliminate any prohibition or restriction on such compensation.

Effective: Upon passage; July 1, 2005.

Weatherwax, Alting, Clark, Hume
(HOUSE SPONSORS — BUCK, GUTWEIN)

January 18, 2005, read first time and referred to Committee on Commerce and Transportation.

February 17, 2005, reported favorably — Do Pass.

February 28, 2005, read second time, amended, ordered engrossed.

March 1, 2005, engrossed. Read third time, passed. Yeas 48, nays 0.

HOUSE ACTION

March 10, 2005, read first time and referred to Committee on Government and Regulatory Reform.

March 24, 2005, reported — Do Pass.

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ES 513—LS 7914/DI 101+



March 25, 2005

First Regular Session 114th General Assembly (2005)

PRINTING CODE. Amendments: Whenever an existing statute (or a section of the Indiana Constitution) is being amended, the text of the existing provision will appear in this style type, additions will appear in **this style type**, and deletions will appear in ~~this style type~~.

Additions: Whenever a new statutory provision is being enacted (or a new constitutional provision adopted), the text of the new provision will appear in **this style type**. Also, the word **NEW** will appear in that style type in the introductory clause of each SECTION that adds a new provision to the Indiana Code or the Indiana Constitution.

Conflict reconciliation: Text in a statute in *this style type* or ~~this style type~~ reconciles conflicts between statutes enacted by the 2004 Regular Session of the General Assembly.

ENGROSSED SENATE BILL No. 513

A BILL FOR AN ACT to amend the Indiana Code concerning
utilities and transportation.

Be it enacted by the General Assembly of the State of Indiana:

SECTION 1. IC 8-23-2-5 IS AMENDED TO READ AS FOLLOWS
[EFFECTIVE JULY 1, 2005]: Sec. 5. (a) The department, through the
commissioner or the commissioner's designee, shall:

(1) develop, continuously update, and implement:

(A) long range comprehensive transportation plans;

(B) work programs; and

(C) budgets;

to assure the orderly development and maintenance of an efficient
statewide system of transportation;

(2) implement the policies, plans, and work programs adopted by
the department;

(3) organize by creating, merging, or abolishing divisions;

(4) evaluate and utilize whenever possible improved
transportation facility maintenance and construction techniques;

(5) carry out public transportation responsibilities, including:

(A) developing and recommending public transportation
policies, plans, and work programs;

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- 1 (B) providing technical assistance and guidance in the area of
 2 public transportation to political subdivisions with public
 3 transportation responsibilities;
 4 (C) developing work programs for the utilization of federal
 5 mass transportation funds;
 6 (D) furnishing data from surveys, plans, specifications, and
 7 estimates required to qualify a state agency or political
 8 subdivision for federal mass transportation funds;
 9 (E) conducting or participating in any public hearings to
 10 qualify urbanized areas for an allocation of federal mass
 11 transportation funding;
 12 (F) serving, upon designation of the governor, as the state
 13 agency to receive and disburse any state or federal mass
 14 transportation funds that are not directly allocated to an
 15 urbanized area;
 16 (G) entering into agreements with other states, regional
 17 agencies created in other states, and municipalities in other
 18 states for the purpose of improving public transportation
 19 service to the citizens; and
 20 (H) developing and including in its own proposed
 21 transportation plan a specialized transportation services plan
 22 for the elderly and persons with disabilities;
 23 (6) provide technical assistance to units of local government with
 24 road and street responsibilities;
 25 (7) develop, undertake, and administer the program of research
 26 and extension required under IC 8-17-7; and
 27 (8) allow public testimony in accordance with section 17 of this
 28 chapter whenever the department holds a public hearing (as
 29 defined in section 17 of this chapter).
 30 **(9) adopt rules under IC 4-22-2 to reasonably and cost**
 31 **effectively manage the right-of-way of the state highway**
 32 **system by establishing a formal procedure for highway**
 33 **improvement projects that involve the relocation of utility**
 34 **facilities by providing for an exchange of information among**
 35 **the department, utilities, and the department's highway**
 36 **construction contractors.**
 37 **(b) Rules adopted under subsection (a)(9) shall not**
 38 **unreasonably affect the cost, or impair the safety or reliability, of**
 39 **a utility service.**
 40 **(c) A civil action may be prosecuted by or against the**
 41 **department, a department highway construction contractor or a**
 42 **utility to recover costs and expenses directly resulting from willful**

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1 violation of the rules. Nothing in this section or in subsection (a)(9)
 2 shall be construed as granting authority to the department to adopt
 3 rules establishing fines, assessments or other penalties for or
 4 against utilities or the department's highway construction
 5 contractors.

6 SECTION 2. IC 8-23-7-2 IS AMENDED TO READ AS FOLLOWS
 7 [EFFECTIVE JULY 1, 2005]: Sec. 2. The department may acquire real
 8 property for any purpose necessary to carry out this article, including
 9 the following:

10 (1) To locate, relocate, construct, reconstruct, repair, or maintain a
 11 state highway, **including area for:**

12 **(A) the placement of a utility facility within the right-of-way**
 13 **of the state highway system; or**

14 **(B) the relocation of a utility facility within the right-of-way**
 15 **of the state highway system due to interference with a**
 16 **highway improvement project.**

17 (2) To widen or straighten a highway.

18 (3) To clear and remove obstructions to vision at crossings and
 19 curves.

20 (4) To construct weigh stations and rest areas.

21 (5) To provide scenic easements and other areas necessary to
 22 cooperate with the federal government or carry out a federal law.

23 (6) To facilitate long-range transportation planning.

24 SECTION 3. IC 8-23-9-58 IS ADDED TO THE INDIANA CODE
 25 AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY
 26 1, 2005]: Sec. 58. (a) **This section applies to a construction contract**
 27 **entered into by the department and a contractor after June 30,**
 28 **2005.**

29 (b) The department may not include in a contract, or in any
 30 specifications or other documents that are a part of or
 31 incorporated in a contract, a provision that prohibits a contractor
 32 from receiving, or restricts the contractor in receiving, reasonable
 33 compensation or reasonable expenses directly related to unforeseen
 34 conditions encountered during the construction project as a result
 35 of:

36 (1) a conflict with the facilities of a utility (as defined in
 37 IC 8-1-9-2(a)); or

38 (2) delays due to the relocation of utility facilities;
 39 that differ materially from the affected utilities or utility
 40 relocations specified in the contract documents.

41 SECTION 4. [EFFECTIVE UPON PASSAGE] (a) As used in this
 42 SECTION, "department" refers to the Indiana department of

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1 transportation established by IC 8-23-2-1.

2 (b) Not later than June 30, 2005, the department shall revise the
3 department's standard specifications, drawings, and other
4 documents that apply to a construction contract under IC 8-23-9
5 to remove any provision that prohibits a contractor from receiving,
6 or restricts the contractor in receiving, reasonable compensation
7 or reasonable expenses directly related to unforeseen conditions
8 encountered during a construction project as a result of:

9 (1) a conflict with the facilities of a utility (as defined in
10 IC 8-1-9-2(a)); or

11 (2) delays due to the relocation of utility facilities;
12 that differ materially from the affected utilities or utility
13 relocations specified in the contract documents for a particular
14 project.

15 (c) This SECTION expires January 1, 2007.

16 SECTION 5. An emergency is declared for this act.

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SENATE MOTION

Madam President: I move that Senator Alting be added as second author of Senate Bill 513.

WEATHERWAX

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COMMITTEE REPORT

Madam President: The Senate Committee on Commerce and Transportation, to which was referred Senate Bill No. 513, has had the same under consideration and begs leave to report the same back to the Senate with the recommendation that said bill DO PASS.

(Reference is made to Senate Bill 513 as introduced.)

SERVER, Chairperson

Committee Vote: Yeas 11, Nays 0.

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SENATE MOTION

Madam President: I move that Senator Clark be added as coauthor of Engrossed Senate Bill 513.

WEATHERWAX

SENATE MOTION

Madam President: I move that Senate Bill 513 be amended to read as follows:

Page 1, between the enacting clause and line 1, begin a new paragraph and insert:

SECTION 1. IC 8-23-2-5 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2005]: Sec. 5. (a) The department, through the commissioner or the commissioner's designee, shall:

(1) develop, continuously update, and implement:

(A) long range comprehensive transportation plans;

(B) work programs; and

(C) budgets;

to assure the orderly development and maintenance of an efficient statewide system of transportation;

(2) implement the policies, plans, and work programs adopted by the department;

(3) organize by creating, merging, or abolishing divisions;

(4) evaluate and utilize whenever possible improved transportation facility maintenance and construction techniques;

(5) carry out public transportation responsibilities, including:

(A) developing and recommending public transportation policies, plans, and work programs;

(B) providing technical assistance and guidance in the area of public transportation to political subdivisions with public transportation responsibilities;

(C) developing work programs for the utilization of federal mass transportation funds;

(D) furnishing data from surveys, plans, specifications, and estimates required to qualify a state agency or political subdivision for federal mass transportation funds;

(E) conducting or participating in any public hearings to qualify urbanized areas for an allocation of federal mass transportation funding;

(F) serving, upon designation of the governor, as the state

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agency to receive and disburse any state or federal mass transportation funds that are not directly allocated to an urbanized area;

(G) entering into agreements with other states, regional agencies created in other states, and municipalities in other states for the purpose of improving public transportation service to the citizens; and

(H) developing and including in its own proposed transportation plan a specialized transportation services plan for the elderly and persons with disabilities;

(6) provide technical assistance to units of local government with road and street responsibilities;

(7) develop, undertake, and administer the program of research and extension required under IC 8-17-7; and

(8) allow public testimony in accordance with section 17 of this chapter whenever the department holds a public hearing (as defined in section 17 of this chapter).

(9) adopt rules under IC 4-22-2 to reasonably and cost effectively manage the right-of-way of the state highway system by establishing a formal procedure for highway improvement projects that involve the relocation of utility facilities by providing for an exchange of information among the department, utilities, and the department's highway construction contractors.

(b) Rules adopted under subsection (a)(9) shall not unreasonably affect the cost, or impair the safety or reliability, of a utility service.

(c) A civil action may be prosecuted by or against the department, a department highway construction contractor or a utility to recover costs and expenses directly resulting from willful violation of the rules. Nothing in this section or in subsection (a)(9) shall be construed as granting authority to the department to adopt rules establishing fines, assessments or other penalties for or against utilities or the department's highway construction contractors.

SECTION 2. IC 8-23-7-2 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2005]: Sec. 2. The department may acquire real property for any purpose necessary to carry out this article, including the following:

(1) To locate, relocate, construct, reconstruct, repair, or maintain a state highway, **including area for:**

(A) the placement of a utility facility within the right-of-way

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of the state highway system; or

(B) the relocation of a utility facility within the right-of-way of the state highway system due to interference with a highway improvement project.

(2) To widen or straighten a highway.

(3) To clear and remove obstructions to vision at crossings and curves.

(4) To construct weigh stations and rest areas.

(5) To provide scenic easements and other areas necessary to cooperate with the federal government or carry out a federal law.

(6) To facilitate long-range transportation planning."

Page 1, delete line 10 and insert "**reasonable compensation or reasonable expenses directly related to unforeseen conditions encountered**".

Page 2, line 7, delete "compensation for" and insert "**reasonable compensation or reasonable expenses directly related to unforeseen conditions encountered during a**".

Page 2, delete line 8.

Page 2, line 16, delete "2006." and insert "**2007.**".

Re-number all SECTIONS consecutively.

(Reference is to SB 513 as printed February 18, 2005.)

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SENATE MOTION

Madam President: I move that Senator Hume be added as coauthor
of Engrossed Senate Bill 513.

WEATHERWAX

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COMMITTEE REPORT

Mr. Speaker: Your Committee on Government and Regulatory Reform, to which was referred Senate Bill 513, has had the same under consideration and begs leave to report the same back to the House with the recommendation that said bill do pass.

BUCK, Chair

Committee Vote: yeas 10, nays 0.

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